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SUMMARY RECORD OF THE 1294th MEETING

Held at Headquarters, New York,
on Tuesday, 22 March 1994, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Draft general comment on article 27 of the Covenant (CCPR/C/49/CRP.1)

1. The CHAIRMAN recalled that, at its previous session, the Committee had provisionally adopted paragraph 1 of the draft general comment (CCPR/C/49/CRP.1). Suggested amendments to paragraph 2 had been circulated in a note by the Committee secretariat.

Paragraph 2

2. Mrs. HIGGINS said that she was the originator of the suggested amendment to the third sentence. With respect to the second sentence, she wished to propose a reordering so that the right to self-determination was mentioned before the right to non-discrimination. The aim of the Committee should be to eliminate any confusion between the three rights: self-determination, non-discrimination and equality before the law.

3. Mr. DIMITRIJEVIĆ said that it was wrong to equate minority rights with self-determination, and it was also wrong, as some States parties did, to then proceed to the assumption that they had no minorities. While he could accept the suggestion made by Mrs. Higgins, there was still an element of repetition. It might be clearer to group the sources of the confusion, namely certain communications and certain reports submitted by States parties, in the first sentence, and then clarify the situation by distinguishing the three rights in question.

4. Mr. POCAR said that the Covenant did not actually provide for any right to non-discrimination; the Committee had previously described the concept as a principle. Further, in its consideration of communications, the Committee had consistently taken the approach that article 2 could be invoked only in conjunction with rights protected under other articles of the Covenant.

5. Mr. WENNERGREN said that the paragraph actually covered two kinds of confusion: between article 27 and the right of peoples to self-determination, and between article 27 and various other articles that had elements in common with it. Accordingly, it was important to draw a distinction between the right to self-determination and minority rights. The confusion between article 27 and the other rights referred to in paragraph 2 might be better dealt with in paragraph 4.

6. Mrs. CHANET said that the only real purpose of paragraph 2 was to provide an introduction to the later paragraphs in the draft general comment, and that it would thus suffice to note that no clearly drawn distinction had been made between article 27 and the right to self-determination and between articles 27 and 26. To attempt more might simply add to the existing confusion.

7. Mr. EL-SHAFEI said that the suggested amendments improved the original text. The confusion between article 27 and self-determination was more significant than that between article 27 and articles 2 (1) and 26. He suggested that the beginning of the paragraph could be reworded to read: "In some communications submitted to the Committee under the Optional Protocol, and reports submitted by States parties under article 40 of the Covenant, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant." The second sentence could then refer to non-discrimination and to equality before the law and equal protection of the law. With respect to the third sentence, he preferred the original language. In any event, to say that States insisted that they had no minorities was too strong; it would be preferable to say that they claimed that they had no minorities. The question of whether non-discrimination was a right or a principle could be avoided by using the term "practice".

8. The CHAIRMAN said that in drafting the text, Mr. Lallah had sought to enumerate the rights in connection with which there was confusion, and had then gone on to develop the issues further in subsequent paragraphs. Committee members might bear that structure in mind in making suggestions.

9. Mr. DIMITRIJEVIĆ said that the Committee's difficulties might be resolved by rewording the beginning of the paragraph to read: "In some reports submitted by States parties under article 40 as well as in some communications submitted to the Committee under the Optional Protocol, the rights under article 27 have been identified with the right to self-determination or reduced to the mere operation of the principle of non-discrimination." Such wording would indicate that there might be some overlapping between the right to self-determination and the principle of non-discrimination, but that they were not the same. He could accept the formulation of the end of the paragraph suggested by Mrs. Higgins, with the inclusion of the idea that States wrongly claimed that they had no minorities.

10. Mr. SADI questioned whether in drafting a general comment it was appropriate to make specific references to some communications or some reports of States parties. The aim of a general comment was to make a direct statement of principle. It would thus be better to make a general statement that the rights under article 27 should not be confused with the other rights referred to in the paragraph, but to avoid specific references.

11. Mr. LALLAH said it seemed that agreement was emerging. Paragraph 2 should be read in the context of the structure of the general comment as a whole. It was important to highlight the essential point at the beginning, the aim being to eliminate the confusion that seemed to exist.

12. Regarding the proper content of a general comment, the Committee had based its earlier general comments on its experience of reports submitted by States parties, so that it seemed entirely appropriate to follow a similar practice for the general comment on article 27. With reference to the ordering of the ideas, he had sought to follow the order presented in the Covenant itself, which was why he had begun with self-determination, dealt with in article 1. The reference to non-discrimination had been an attempt to use a short form, but the Committee could expand the language to make it more precise. The overall aim of

(Mr. Lallah)

the paragraph was to find a diplomatic means of telling States parties that they had confused certain elements of the Covenant, although he was not sure that States parties had confused article 27 with self-determination, an issue that had arisen, rather, in communications.

13. Mr. POCAR said that his main concern was that the Covenant did not provide for any right to non-discrimination, and that it would be preferable to refer to the principle of non-discrimination. Further, article 2 did not provide for any autonomous right, although the drafting of the paragraph suggested that it did.

14. Mrs. EVATT agreed that some elements of the confusion were present in communications rather than the reports of States parties, a point which should be retained. The paragraph did not really require much amendment. It would suffice to delete the reference to the right to self-determination from the second sentence, and to refer to freedom from discrimination rather than to non-discrimination. The preliminary nature of paragraph 2 should be retained, and the Committee should enter into substance later in the draft general comment, so that it might be preferable to move the last sentence to paragraph 4.

15. Mrs. HIGGINS said that she could support Mrs. Evatt's suggestions, and agreed that one kind of confusion was to be found in some communications and another kind in reports by States. She would therefore suggest that the second sentence of paragraph 2 should be reworded to read: "Further, in reports submitted by States parties under article 40 of the Covenant, the obligations of States under article 27 have sometimes been confused with the duty under article 2 (1) to ensure the rights guaranteed under the Covenant without discrimination and also with the right to non-discrimination and equal protection of the law under article 26." She would also suggest that the word "insist" in the proposed rewording of the last sentence of paragraph 2 should be replaced by the words "wrongly contend".

16. Mr. WENNERGREN suggested that the words "and/or reports" might be added after the word "communications" in the first sentence of paragraph 2.

17. Mr. LALLAH said that there seemed to be a consensus that the reference to the right to self-determination in paragraph 2 should be omitted and that the last sentence of the paragraph, in the amended form suggested by Mrs. Higgins, should be moved to paragraph 4.

18. Mrs. CHANET said that she would not oppose the consensus, but wished to make it clear that confusion arose both in reports submitted by States parties and in communications.

19. Mr. LALLAH said that was true but, as he had explained earlier, the important point to be emphasized was the confusion between self-determination and rights under article 27 in some communications.

20. The CHAIRMAN said the Committee seemed to agree that in paragraph 2, the first sentence should be retained, the second sentence reformulated as Mrs. Higgins had proposed, the reference to self-determination eliminated, and the last sentence, as revised by Mrs. Higgins, moved to paragraph 4.

21. Paragraph 2, as amended, was adopted.

Paragraphs 3.1-3.3

22. Mr. SADI said he was afraid that paragraph 3.1 as now worded might give rise to the conclusion that minorities did not enjoy collective as well as individual rights.

23. Mrs. EVATT suggested that the last sentence of paragraph 3.1 should be reworded to read: "It is thus a right, the violation of which is cognizable under the Optional Protocol, of individuals or groups of individuals similarly affected." She would also suggest the deletion of paragraph 3.2 and the deletion in paragraph 3.3 of the words "rather than political secession or territorial fragmentation". Lastly, she would suggest that a reference to indigenous peoples should be introduced in paragraph 3.3 by inserting the words "as for example in the case of certain indigenous peoples" after the words "its resources" in the last sentence; a further sentence should then be added, reading "These factors may also be relevant in the right to self-determination."

24. Mr. EL-SHAFEI suggested that the last sentence of paragraph 3.1 should be retained, with the exception of the words "the violation of which is". He felt that paragraph 3.2 was important because it prepared the way for paragraph 3.3. He would, however, prefer a more positive formulation of the first sentence of paragraph 3.3, for example, by rewording it to read: "The Covenant does not advocate political secession or the territorial fragmentation of a State party. However, ...". In general, he felt that all three paragraphs were important because of their bearing on how article 27 of the Covenant was to be dealt with by the Committee.

25. Mr. NDIAYE suggested that the words "like all the others" should be added after the words "on the other hand" in the third sentence of paragraph 3.1, and the words "is so cognizable" at the end of the paragraph should be replaced by the words "may be cognizable". In paragraph 3.2, he felt that the ideas of ethnicity, religion or language should not be introduced, as the word "peoples" used in relation to self-determination clearly referred to all inhabitants of a territory. In paragraph 3.3, he suggested that the words "or territorial fragmentation" should be deleted as they were inaccurate, and that the last sentence of the paragraph should be revised because it might, as it stood, increase rather than diminish the confusion apparent in some communications and reports.

26. Mr. AGUILAR said he agreed that, in the last sentence of paragraph 3.1, the distinction between rights under the Optional Protocol and under article 27 of the Covenant should be clarified. In paragraph 3.2, he saw no need for the references to ethnicity, religion or language in common. In paragraph 3.3, the references to both political secession and territorial fragmentation should be deleted.

27. Mr. WENNERGREN suggested that the first sentence of paragraph 3.3 should be amended to read: "The Covenant is not meant to limit the sovereignty and territorial integrity of States." In the next sentence, the word "individual" should be inserted before the word "rights", and the last clause of the sentence, after the word "resources" should be deleted. He also suggested that the proposed reference to indigenous peoples, which he supported, should be included in paragraph 5.

28. Mrs. HIGGINS, referring to paragraph 3.3, said she agreed that it was important to assure States that article 27 of the Covenant was not an entitlement to claim a right of secession. She therefore suggested that the first sentence of the paragraph should be replaced by the following: "States parties enjoy sovereignty and territorial integrity. The rights provided under article 27 do not include that of political secession." She also agreed that the last clause of the next sentence, after the words "its resources", should be deleted, and that a reference to indigenous peoples should be included.

29. Mrs. CHANET said that in order to be consistent with paragraph 2, paragraphs 3.1-3.3 should be limited to the statement of principles. She agreed with the suggestions made by Mrs. Evatt and Mr. El-Shafei on paragraph 3.1 and felt that, as the word "peoples" could not be defined, the paragraph should be deleted entirely. With regard to paragraph 3.3, there was no need to reaffirm the principle of sovereignty; all that need be said was that the rights conferred under article 27 did not include the right of political secession.

30. Mr. MAVROMMATIS said that he agreed with the amendments to paragraph 3.1 suggested by Mrs. Evatt and Mr. El-Shafei. He also would prefer to delete paragraph 3.2, but if it was retained, it should be reworded in order to apply to people as a whole. Paragraph 3.3 must retain a clear message to States parties that they had nothing to fear about their sovereignty. He agreed with the new wording for that paragraph proposed by Mrs. Higgins.

31. Mr. POCAR said that he could accept the wording of paragraph 3.1 as amended, and would also prefer to delete paragraph 3.2, as he saw no purpose in defining the term "peoples".

32. The existing wording of paragraph 3.3 might give the impression that certain groups had the right to self-determination. He agreed that some reference to indigenous populations should be included, to convey the idea that, for the purposes of article 27, the term "minority" might include indigenous peoples.

33. Mr. SADI said that, since sovereignty rights were not the main issue in paragraph 3.3, the first sentence could be replaced by the following: "Enjoyment of rights under article 27 shall not prejudice the sovereignty and territorial integrity of States parties."

34. It was unclear to him whether individual or collective rights were being addressed in the remainder of that paragraph. Although he had no new wording to propose, he considered that only individual rights under article 27 should be addressed; the concept of the use of resources appeared to go beyond the individual rights of members of minority groups.

35. Mr. PRADO VALLEJO, referring to paragraph 3.1, said that no express distinction was drawn in the text of the Covenant itself between the right to self-determination and the right protected under article 27. He agreed that paragraph 3.2 should be deleted, because it dealt with rights that were clearly collective and not individual, and the Committee should avoid any attempt to define the term "peoples".

36. He noted, with regard to paragraph 3.3, that it was possible for indigenous peoples to be a majority in the population of a particular country; such was the case in many of the countries of Latin America. It should be established clearly, however, that article 27 did not provide protection for the right of secession. The second part of the paragraph should avoid any possible interpretation to that effect.

37. Mr. HERNDL said he joined the growing consensus that paragraph 3.2 should be deleted because it was improper, in that context, to attempt to define peoples. Regarding paragraph 3.3, it seemed inadvisable to comment on respect for sovereignty and territorial integrity in the context of article 27, which could not be used as a legal argument for secession. The wording proposed by Mr. Sadi for that section of the paragraph appeared best. He had difficulty with the reference to the use of territory, and agreed that the part of the second sentence after "resources" should be deleted.

38. The debate whether indigenous people were a population or a minority had been a lively one at the World Conference on Human Rights. That Conference had rejected the use of the term "indigenous peoples", opting to use the term "people". He believed that the references to such groups should be left aside for the time being.

39. Mr. FRANCIS said that in order to reaffirm that the right guaranteed under article 27 was not a right of secession and in order to make a positive statement on the scope of article 27, the last sentence of paragraph 3.1 should read: "Rather, they are rights to ensure the individual and communal enjoyment of the rights specified." Another sentence could then be added making reference to indigenous peoples, as Mrs. Evatt had suggested.

40. Mr. AGUILAR said he believed that the problem referred to by Mr. Prado Vallejo concerning the first sentence of paragraph 3.1 lay with the translation from English into Spanish and could easily be corrected.

41. In paragraph 3.3, he would reverse the order of the references to territorial integrity and sovereignty, since sovereignty devolved from a specific territory. In his view, territorial integrity and sovereignty should be mentioned in the paragraph, but the second sentence should be clarified by adding the following phrase to the end: "and article 27 did not encompass secession".

42. The CHAIRMAN, speaking in his personal capacity, said that he agreed with the suggested amendments to paragraph 3.1, and also felt that paragraph 3.2 should be deleted. A delicate balance must be struck in paragraph 3.3 between rights under article 27 of the Covenant, and territorial integrity and fragmentation. The Committee's approach had been that rights protected in article 27 were different from the right to self-determination. He favoured neutral wording not directly linking those two rights.

43. Mr. LALLAH said that, while he agreed that paragraph 3.2 must be deleted, he did not regret its inclusion in the draft because it had given rise to a very interesting discussion. He also joined the consensus that the final clause of paragraph 3.3 should be deleted. Mrs. Evatt had made a useful suggestion for the rearrangement of paragraph 3.1. In her view, the last sentence of that paragraph should read: "It is thus a right, the violation of which is cognizable under the Optional Protocol, of individuals or groups of individuals similarly affected." He was not certain the Committee could go that far; the group must have a particular right in order for the individual to enjoy it, or the individual could be in conflict with the group.

44. He proposed the following wording to incorporate the suggestions made regarding paragraph 3.1: "The Covenant draws a distinction between the right to self-determination and the right protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such, and is included, like the other personal rights conferred on individuals, in part III of the Covenant, and is cognizable under the Optional Protocol."

45. Turning to paragraph 3.3, he said that two alternative formulations had been proposed for the first sentence. Mrs. Higgins had suggested that it should read: "States parties enjoy sovereignty and territorial integrity. The rights provided under article 27 do not include that of political secession." Mr. Sadi had proposed the following version: "Enjoyment of rights under article 27 shall not prejudice the sovereignty and territorial integrity of States parties." Mrs. Evatt had suggested the inclusion in that paragraph of a reference to indigenous people, although Mr. Herndl had expressed some hesitation. It seemed, however, that Mr. Sadi's suggestion would allow such a reference. Mr. Prado Vallejo had stressed that some indigenous peoples were actually in the majority. Taking into account all those suggestions, he proposed the following wording for paragraph 3.3: "The enjoyment of the rights to which article 27 relates shall not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspects of the rights protected under that article - for example, a particular culture - may consist in a way of life which is closely associated with territory and use of its resources, as is the case with some indigenous peoples."

46. Mrs. HIGGINS said that she could go along with Mr. Sadi's proposal. The difficulty lay in the use of the term "indigenous peoples", which might give the impression that certain special rights were involved. She therefore suggested that the last two sentences of the paragraph should read: "However, one or other aspect of the rights protected under that article - for example, a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may be particularly true of indigenous persons when they constitute a minority." That would accommodate Mr. Prado Vallejo's comment.

47. Mr. SADI said that in view of Mrs. Higgins's proposal, he withdrew his reservations.

48. Mrs. CHANET said that the formula proposed by Mr. Sadi had dispelled her objections regarding the reference to sovereignty. She suggested that when paragraph 3.3, as amended by Mr. Sadi, was translated into French, the phrase "shall not prejudice" should be rendered as "ne porte pas atteinte" rather than "ne porte pas préjudice". Furthermore, "self-determination" should not be translated as "auto-détermination", but as "le droit des peuples à disposer d'eux-mêmes", in accordance with the French text of article 1 of the Covenant.

49. Mrs. EVATT suggested that the Committee could strengthen the point it was trying to make by adding the words "of individuals" after "the rights" in the second sentence, so that the sentence would read: "At the same time, one or other aspect of the rights of individuals protected under that article ...". Furthermore, in the third sentence, the term "indigenous persons" suggested by Mrs. Higgins, could be replaced by "members of indigenous communities which constitute a minority", inasmuch as paragraph 3.1 already made it clear that the rights involved were individual rights.

50. Mr. WENNERGREN proposed that Mrs. Evatt's suggestion should be further expanded by inserting the phrase "i.e., are looked upon as indigenous people" after the phrase "which constitute a minority".

51. The CHAIRMAN said that Mrs. Evatt's original wording should be retained, with the insertion of the word "individual" before "members of indigenous communities".

52. Mr. LALLAH said that, in view of the difficulties inherent in the text, he could accept Mrs. Evatt's suggestion. The Committee had thus reached a consensus regarding the reformulation of paragraphs 3.1 and 3.3.

53. Paragraph 3.1, as orally amended, was adopted.

54. Paragraph 3.2 was deleted.

55. Paragraph 3.3, as orally amended, was adopted.

Paragraph 4

56. The CHAIRMAN recalled that the Committee had agreed to transfer the last sentence of paragraph 2, as amended by Mrs. Evatt, to paragraph 4; he invited the members of the Committee to make suggestions as to where the sentence should be placed.

57. Mrs. EVATT suggested that the first four words of the sentence should be deleted and the remainder placed at the end of paragraph 4. The sentence would then read: "Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion wrongly contend that they have no minorities."

58. Mrs. HIGGINS agreed with that suggestion. She drew attention to Mr. Pocar's comment regarding paragraph 2, namely, that the Covenant did not actually provide for any right to non-discrimination. For that reason, in paragraph 4, article 2 (1) should be described as dealing with the enjoyment of rights without discrimination, while article 26 should be dealt with separately.

59. Mr. AGUILAR said that in the first sentence of paragraph 4, the word "equality" should followed by "before the law".

60. Mr. POCAR said that he agreed with the proposed reformulation of the paragraph.

61. Mrs. HIGGINS said that the paragraph would begin:

> "4. The Covenant also distinguishes the rights protected under article 27 from the rights protected under articles 2 (1) and 26. The guarantee of rights without discrimination under article 2 (1) applies to all the rights protected under the Covenant. It also applies to all individuals within the territory of a State, whether those persons belong to one type of minority or another of those specified in article 27, or whether they belong to majority groups."

The rest of the paragraph would remain unchanged.

62. The CHAIRMAN said that in the sentence beginning with the words "In addition", the term "non-discrimination" should be retained, as it was a distinct right under article 26.

63. Mr. AGUILAR suggested that in the second sentence read out by Mrs. Higgins, the words "of rights without discrimination" should be deleted, as article 2 (1) did not stipulate a right as such, but a principle.

64. Mr. WENNERGREN said that he had difficulties with the terms "minority" and "majority groups", as "minority" had not been defined. For instance, if 49 per cent of the population of a country belonged to a particular group, he wondered whether that group should be considered a minority.

65. The CHAIRMAN said that article 27 had been quoted in paragraph 1 of the draft general comment so as to avoid the need to define the term "minority".

66. Mrs. CHANET said that, while she supported Mrs. Higgins' amendment as a whole, she failed to understand why the third sentence should refer to "individuals within the territory of a State", while the last sentence of paragraph 4 referred to "individuals within its jurisdiction". That might give the impression that two different types of rights were involved. The Covenant did not distinguish between the territory of a State and its jurisdiction.

67. Mr. POCAR said that, while he could go along with Mrs. Higgins' proposals, he still had misgivings regarding the use of the expression "the right to non-discrimination". It was unclear whether article 27 provided for a general right to non-discrimination, as opposed to equality before the law and so on.

68. Mrs. HIGGINS said that her proposal accommodated Mr. Pocar's concern, as it referred to the guarantee of rights without discrimination.

The meeting rose at 1 p.m.